



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 FIRST APPEAL NO. 2312 OF 2025

Avinash Babaji Narsale

VERSUS

Apeksha W/o Avinash Narsale

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Mr. Bhagwat Nilesh N, Advocate for Appellant

Ms. Suwarna M. Zaware, Advocate for Respondent

CORAM : Y. G. KHOBRAGADE, J.

Dated : 7th March, 2026

PER COURT :-

1. Heard learned counsel for the Appellant and learned counsel for the respondents at length.
2. By the present appeal, the Appellant takes exception to the order dated 25.09.2024 passed in Civil M.A. No. 5 of 2023 by the learned District Judge-7, Ahmednagar, thereby rejected the said application under section 25 of the Hindu Minority and Guardianship Act, 1890, seeking custody of minor child i.e. present Respondent no.2.
3. Learned counsel appearing for the Appellant canvassed that the marriage between the Appellant and Respondent no.1 was solemnized on 27.05.2017 as per Hindu customs and rites and on 03.06.2017 the said marriage was registered. Out of the said marital relationship, they are blessed with a female child-Respondent no.2 on 16.06.2019. The learned counsel for the Appellant further canvassed that after six months of the marriage, the Respondent-wife started ill-

treating and abusing the Appellant as well as misbehaving with him. The Appellant made several attempts to convince the Respondent–wife to change her behaviour; however, she could not change her behaviour. It is also contended that, on several occasions the Respondent–wife left the company of the Appellant and refused to cohabit with him. Therefore, the present Appellant filed Hindu Marriage Petition No. 196 of 2020 before the learned 10th Joint Civil Judge, Senior Division, Ahmednagar and prayed for decree of restitution of conjugal rights, wherein the learned Trial Court directed the present Respondent no.1 to join company of the Appellant with minor child within a period of one month. In spite of the said fact, the Respondent wife did not join the company of the Appellant.

4. The learned counsel for the Appellant further canvassed that the Appellant has filed an application under Section 25 of the Hindu Minority and Guardianship Act, 1956 seeking custody of the minor child, Respondent No.2, on the ground that Respondent No.1–wife is not taking proper care for upbringing of the minor child. So also, no proper school facilities are available at the respondent's parental village. Not only this, but the Respondent wife is also not well educated. However, on 25.09.2024, learned District Judge-7, Ahmednagar passed the impugned order and rejected the application for custody of minor without any substantial reason, therefore, the impugned order is illegal, bad in law; hence, prayed to quash and set aside the same.

5. Learned counsel appearing for the Appellant further canvassed that during the pendency of H.M.P No. 196 of 2020, on 19.04.2022, the learned Trial Court passed an order below Exhibit-27 and permitted the Appellant to meet the minor daughter on the second and fourth Saturday of each month. Therefore, the learned counsel appearing for the Appellant submitted that the Appellant may be granted visitation right to his minor daughter Respondent no.2, until she attains the age of majority.

6. Per contra, the learned counsel for Respondent wife has filed affidavit in reply and strongly opposed the appeal. The learned counsel appearing for the respondents canvassed that, the learned Trial Court had interacted with the minor-Respondent no.2 and considering welfare and betterment of Respondent no.2 minor, the impugned order has been passed, which is just and proper. It is further canvassed that the present Respondent wife had filed an application in said HMP No. 196 of 2020 and prayed for grant of maintenance @ Rs.3000/- per month and the learned Trial Court directed the present Appellant to pay the said maintenance but no such maintenance has been paid by the Appellant. Hence, prayed for dismissal of the appeal.

7. Having regard to the submissions canvassed on behalf of both sides, I have gone through the record. It is an undisputed fact that marriage between the Appellant and Respondent no. 1 was solemnized on 27.05.2017 as per Hindu customs and rights and on 03.06.2017 the said marriage was registered. Out of the wedlock, they are blessed

with a female child-Respondent no.2. At the time of institution of Civil MA No. 5 of 2023, Respondent no. 2 was three and half years old, however, as on today, she is six and half years old. It is also not disputed that Respondent no. 2 minor is now admitted in a primary school.

8. It is well settled law that while deciding application for custody of minor, welfare of the minor child is the paramount consideration. In case of **Jayprakash Chaudhari Vs. Shamsundar**, AIR 2000 SC 2172 it has been held that in matters relating to custody of a minor, the paramount consideration is the welfare and interest of the child, and not the legal rights of the parents. Even though a parent may be a natural guardian, the Court must decide custody based on what is best for the minor's physical, moral, and educational welfare.

9. In the case at hand, the present Appellant has not come forward with a case that he has a stable source of income or that he is well educated. Per contra, Respondent No.1-wife has alleged that the Appellant is addicted to alcohol and, under the influence of intoxications, he has the habit of quarreling with her and beating her mercilessly. So also, it has come on record that the Appellant was earlier carrying on some business; however, the said business has been closed and he has started working in a private firm. Further, the Appellant sold the gift articles and gold ornaments and has also failed to honour the decree of maintenance.

10. On perusal of the impugned order, it prima facie appears that the learned Trial Court had interacted with the minor child in chambers in the presence of the Appellant and Respondent No.1. However, the minor child appeared to be very shy and did not accept the gift articles which the Appellant had attempted to give her. Therefore, all these facts indicate that Respondent No.2–minor child has more attachment, love and affection towards her mother. Considering the welfare of the minor child, the learned Trial Court refused to grant custody of the minor child to the Appellant. The findings recorded by the learned Trial Court are well reasoned and based on the material available on record. Merely, Respondent no.2 minor remained absent in the school for some period, it does not mean that Respondent no.1 is not taking proper care of Respondent no.2 minor.

11. In view of above discussion, I do not find any substance in the grounds set out by the Appellant. The findings recorded by the Trial Court appear to be just and proper and no interference is called for at the hands of this Court. Hence, the present appeal deserves to be dismissed and accordingly, it is dismissed.

(Y. G. KHOBRADE, J.)

JPChavan